

REMARKS

This paper is being provided in response to the February 24, 2006 Office Action for the above-referenced application. The Office Action has been carefully considered. Reconsideration and allowance of the subject application, as amended, is respectfully requested.

Claims 1-5, 7, 8, 16-18, 20-23 and 24-28 are pending.

Claims 1-5, 7, 8, 16-18, 20-23 and 24-28 stand rejected.

Claims 5 and 22 have been amended.

The Examiner has rejected Claim 5 and 22 under 35 USC 112, first paragraph, as failing to comply with the written description.

Applicant respectfully disagrees with the Examiner, but after a careful review of the written description has elected to amend the claims to recite the term “data transfer rate” rather than “data copy rate.” No new matter has been added. Support for the amendment may be found at least on page 5, line 5, which states “predetermined transfer rate.”

For at least this reason, it is respectfully requested that the rejection be withdrawn and the claims allowed.

The Examiner has rejected Claims 1-5, 7, 8, 16, 18, 20-22, 24-26 and 28 under 35 USC 103(a) as being unpatentable over Colby (USP no. 6,449,647) in view of Chiou (USP no. 6,792,507).

Applicant would note that the cited references (Colby and Chiou) are the same references cited in the prior Office Action. However, the Examiner in section 28 of the instant Office

Action, states that “[a]pplicant’s arguments with respect to the claims 1-5, 7, 8, 16-18, 20-22 and 24-28 have been considered but are moot in view of the new ground(s) of rejection.”

After a careful review of the reasons for rejecting the claims, it is believed that the new ground(s) of rejection is based on the reference to Colby, col. 9, lines 5-40 and Table 1, stated on page 3 of the instant Office Action with regard to the claim element “wherein the bandwidth allocation is determined based on an estimate of data to be copied and a known time period.”

Applicant respectfully disagrees with the Examiner’s reason for the rejection of the claims for the same reasons recited in applicant’s response to the prior Office Action, which are reasserted, as if in full, herein, and for the arguments presented herein.

Contrary to the statements regarding Colby teaching “bandwidth allocation is determined on an estimate of data to be copied and a known time period, monitoring network traffic characteristics during the data copying and responsive to the monitored network traffic characteristics, selectively requesting an effect on the bandwidth allocation.” Applicant respectfully disagrees.

More specifically, Colby teaches that “[i]n the case of an HTTP request, the content-type or filename extension is used to deduce an QoS class, delay, minimum bandwidth, and frame loss ratio as shown in Table 1.” (see col. 9, lines 13-16). Table 1 illustrates that for a QoS of class 1, the delay (i.e., maximum delay suitable for retrieving particular content) is less than 250 ms and the minimum bandwidth is 8KBPS, for example. Similarly for QoS of class 3, the delay is 500 ms and the minimum bandwidth is 0-16Mbps. Colby further discloses that “[t]he content-size is used to determine the size of the requested flow.”

Hence, Colby teaches that for a desired QoS, a minimum bandwidth is determined based on the content type or filename extension and that the data must be transferred within a maximum period. However, Colby further teaches that a “MinBW of the requested content [is calculated] ... using the formula $\text{MinBW} = \text{Framesize} / \text{hopLatency}$ (see col. 15, lines 12-19) or that “the average bandwidth requirement AvgBW of the requested flow based on the size of the candidate server’s cache and the round trip time RTT... using the formula $\text{AvgBW} = \min(\text{CacheSize}, \text{TcpW}) / \text{RTT}$. The FAC uses ... [determines] the minimum bandwidth requirement MinBW as the requested content using the formula:
 $\text{MinBW} = \min(\text{AvgBW} * \text{MinToAvg}, \text{ClientBW})$.” (see col. 15, lines 11-40).

Colby, however, fails to teach or suggest monitoring the network traffic during the data transfer and responsive to the monitored network traffic characteristics, selectively requesting an effect on the bandwidth allocation, as is recited in the claims as Colby teaches setting up the bandwidth prior to the transmission.

A claimed invention is *prima facie* obvious when three basic criteria are met. First, there must be some suggestion or motivation, either in the reference themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the teachings therein. Second, there must be a reasonable expectation of success. And, third, the prior art reference or combined references must teach or suggest all the claim limitations.

In this case, Colby fails to teach a material element recited in the claims and Chiou fails to correct the deficiency found to exist in Colby. Hence, the invention recited in independent claim 1 is not rendered obvious by the references cited as neither reference teaches or suggests

each of the elements claimed. Thus, the combination of the references fails to teach or suggest all the elements claimed.

Applicant submits that the reason for the rejections of claim 1 has been overcome and the rejection can no longer be sustained. Applicant respectfully requests withdrawal of the rejection and allowance of the claims.

With regard to the remaining independent claims, these claims recited subject matter similar to that recited in claim 1 and were rejected citing the same references used in rejecting claim 1. Thus, the remarks made in response to the rejection of claim 1 are applicable in response to the rejection of the remaining independent claims and are reasserted, as if in full, in response to the rejection of the remaining independent claim.

For at least this reason, it is submitted that the reason for the rejection of these claims has been overcome and the rejection can no longer be sustained. It is respectfully requested that the rejection be withdrawn and the claims allowed.

With regard to the remaining dependent claims, these claims ultimately depend from the independent claims, which have been shown to be allowable over the cited references. Accordingly, the remaining claims are also allowable by virtue of their dependence from an allowable base claim.

Claims 17 and 27 stand rejected under 35 USC 103(a) for allegedly being unpatentable over Colby and Chiou in view of Lyon (USP no. 6,028,841).

The aforementioned remaining claims are each dependent from an independent claim discussed above. As shown above the independent claims are not rendered obvious in view of

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the teachings of Colby and Chiou and the additional reference cited fails to provide any teachings to correct the deficiencies in the combination of Colby and Chiou.

Accordingly, the aforementioned remaining claims are also allowable by virtue of their dependence from an allowable base claim.

In the event the Examiner deems personal contact desirable in the disposition of this matter, the Examiner is invited to call the undersigned attorney.

Please charge all fees occasioned by this submission to Deposit Account No. 05-0889.

Respectfully submitted,

Dated: _____

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